

OGC REVIEW COMPLETED

1 June 1974

MEMORANDUM FOR: Deputy Director (Administration)

SUBJECT : Refinancing of 1952 FY [REDACTED] 25X1

1. I have reservations regarding the proposal to refinance, out of a subsequent appropriation, payments to be made for the balance of the procurement contracted for during FY 52 which cannot be delivered until after 30 June 1954.

2. It is understood that the refinancing is to be accomplished by cancelling the present contract as to the undelivered balance but to complete the procurement by a new agreement obligating FY 54 or 55 funds. However, to the extent that the procurement originally contracted for is still needed and the contractor is able to perform, I do not think that there is any legal basis for cancelling the present agreement.

3. The mere fact that the appropriation chargeable under a contract may have lapsed does not, of course, excuse a contractor from fulfilling his contractual obligations, nor does it preclude him from obtaining such payments as may be due in accordance with the Government's obligations. In regard to this latter point, reference is made to the Certified Claims Act of 1949 (31 U.S.C. 712 a-b) pursuant to which payments may be made from a consolidated account -- composed of the balances of unexpended appropriations -- by direct settlement with the General Accounting Office.

4. In suggesting that now an appropriation different from that originally obligated be used, the proposal is not in accord with the criteria for determining the fiscal year chargeable. The general rule relative to obligating a fiscal year appropriation by contract is that: (1) the contract must be made within the fiscal year covered by the appropriation sought to be charged and, (2) the subject matter must concern a need arising within that particular year (32 Comp. Gen. 56). Here the subject matter of the proposed contract could not logically be considered as concerned with the legitimate needs of FY 54 or 55 inasmuch as it was originally the subject matter of an agreement made to meet the needs of FY 52. And since the obligation of funds transferred and credited pursuant to the Economy Act (31 U.S.C. 686) is subject to the same basic limitations as they apply to appropriations generally, I believe that an attempt to now obligate FY 54 or 55 funds for the purpose suggested could be challenged.

5. Finally, the proposal cannot be reconciled with the established rule against charging an appropriation other than that originally obligated (17 Comp. Gen. 664, 666). This prohibition is based on the general principle that an obligation against an appropriation once incurred remains such until discharged by actual payment or is terminated in such a manner as to remove any possibility of liability against the Government. It is apparent here that this possibility would not actually be removed and that it would in turn be related to the original contract executed during FY 52.

6. On the basis of the facts submitted, I believe the proposal is legally objectionable and would recommend that in lieu thereof the Certified Claims Procedure be followed in effecting post-lapse payments. If, however, there are additional factors which preclude such action, I would suggest that the General Accounting Office and the Bureau of the Budget be consulted, particularly in view of the amount involved.

7. The papers are returned.

/S/

LAWRENCE R. HOUSTON  
General Counsel

Attachment

OGC:LRH:RJB:jk  
Orig. & 1 - Addressee  
1 - Legal  
1 - Vital  
1 - Subject✓  
1 - Signer  
1 - Chrono